

The issue before the Administrative Law Judge was whether claimant sustained injury to his upper back or neck as a result of a work related accident of August 19, 1993. The Administrative Law Judge held that the claimant failed to prove by a preponderance of credible medical evidence that his neck and arm complaints are causally related to the work related accident of August 19, 1993. The claimant requests the Appeals Board to review that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds for preliminary hearing purposes, as follows:

The finding of the Administrative Law Judge that claimant has failed to prove that he sustained injury to his upper back or cervical spine as a result of the work related accident of August 19, 1993, should be affirmed.

On August 19, 1993, claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent when he fell while stacking wood. As a result of the accident, claimant injured his left knee. As a result of the knee injury, claimant was off work for two or three weeks. Upon his return to work, claimant was moved to a different machine which required greater physical effort to operate. Claimant testified that he then noticed increased symptomatology in his upper back and neck. Prior to this time, claimant had not noticed increased symptomatology in the cervical spine and had not advised any of the physicians that had been treating his knee that his upper back or neck had been injured as a result of his fall. The first notice that claimant gave respondent that his cervical spine was troubling him was in December of 1993.

Claimant was involved in an automobile accident in 1989 and as a result of same underwent two surgeries to his cervical spine. Claimant now contends that the fall has aggravated the symptomatology that he has experienced since the automobile accident. However, the medical evidence fails to support that allegation. Claimant testified that a Topeka neurologist, Dr. Philip E. Mills, had told him that his neck could only be in its present condition as a result of a fall or trauma to it. However, the medical report from Dr. Mills does not support that statement.

Based upon the record as a whole, the evidence presented fails to prove that claimant injured or aggravated his upper back or cervical spine in his accident of August 19, 1993.

K.S.A. 44-501(a) states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record."

K.S.A. 44-508(g) states:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer dated April 6, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Jeffrey A. Chanay, 3300 SW Van Buren, Topeka, Kansas 66611
Patricia A. Wohlford, PO Box 26441, Overland Park, Kansas 66225
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director